

Internal Revenue Service

Number: **201444019**

Release Date: 10/31/2014

Index Number: 2632.02-00, 2642.00-00,
9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-112168-14

Date:

July 16, 2014

Legend

Donor =

Trust =

Date 1 =

Date 2 =

Year =

Child =

Executor =

Accounting Firm =

Law Firm =

Dear :

This letter responds to your authorized representative's letter dated March 6, 2014, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to elect out of the generation-skipping transfer (GST) exemption automatic allocation rules.

The facts and representations submitted are summarized as follows:

On Date 1, a date after December 31, 2000, Donor created and funded an irrevocable inter vivos trust (Trust) for the benefit of Child. Pursuant to the terms of Trust, the trustee has discretion to make distributions of principal or income for the benefit of Child. When Child reaches the age of 35, Trust will terminate, and the remaining property will be distributed outright to Child. If Child dies prior to attaining age 35, the Trust property remaining on the date of Child's death will be distributed in equal shares to Child's living siblings. However, if a sibling is under the age of 35, such sibling's share shall be held in further trust until that sibling attains age 35. If neither of

Child's siblings is living at the time of Child's death, the remaining Trust property will be distributed to Child's half-sibling, or held in further trust if Child's half-sibling is under the age of 35. If Child's half-sibling is not living at the time of Child's death before age 35, then the remaining Trust property is distributed to Donor's grandchildren, and if none are living, then equally to Donor's five siblings, per stirpes.

Donor retained Accounting Firm to prepare a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Year reporting the transfer. However, Accounting Firm did not include with the Form 709 an election out statement to avoid the automatic allocation of Donor's GST exemption to the Date 1 transfer of property to Trust.

On Date 2, Donor died. Executor retained Law Firm to administer the estate. During the estate administration, Law Firm reviewed Donor's Year Form 709 and noted the Accounting Firm's failure to include the election out statement.

Donor did not make any additional transfers to Trust, and to date, no taxable distributions or taxable terminations have occurred with respect to Trust.

Executor now seeks a ruling granting an extension of time to elect out of the automatic allocation rules with respect to Donor's Year transfer to Trust.

LAW AND ANALYSIS

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST). Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2613(a) provides, in part, that the term "skip person" means (1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or (2) a trust, (A) if all interests in such trust are held by skip persons or (B) if, (i) there is no person holding an interest in such trust, and (ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

Section 2602 provides that the amount of the tax imposed by §2601 is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Under § 2642(a), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is the excess (if any) of 1 over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(c)(1) provides that, for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate, regardless of whether such a return is required to be filed. Section 2632(a)(2) provides that the manner in which allocations are to be made shall be prescribed by forms or regulations issued by the Secretary.

Section 2632(c)(1) provides that if any individual makes an indirect skip during his lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero (automatic allocation). If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(2) provides that for purposes of § 2632(c)(1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been allocated by such individual (or treated as allocated under § 2632(b)(1) or § 2632(c)(1)).

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust, as defined in § 2632(c)(3)(B). Under § 2632(c)(5)(A)(i)(I) and (II), an individual may elect to have the automatic allocation rule in § 2632(c)(1) not apply to an indirect skip, or to any or all transfers made by such individual to a particular trust.

Section 2632(c)(5)(B)(ii) provides that an election under § 2632(c)(5)(A)(i)(II) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Section 26.2632-1(b)(2)(iii) of the Generation-Skipping Transfer Tax Regulations provides, in part, that to elect out, the transferor must attach a statement (election out statement) to a Form 709 filed within the time period provided in § 26.2632-1(b)(2)(iii)(C) (whether or not any transfer was made in the calendar year for which the Form 709 was filed, and whether or not a Form 709 otherwise would be required to be filed for that year). The election out statement must identify the trust (except for an election out

under § 26.2632-1(b)(2)(iii)(A)(4)) and specifically provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers. Further, unless the election out is made for all transfers made to the trust in the current year, the current-year transfers to which the election out is to apply must be specifically described or otherwise identified in the election out statement.

Section 26.2632-1(b)(2)(iii)(C) provides, in part, that to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing (within the meaning of § 26.2632-1(b)(1)(ii)) of the Form 709 for the calendar year in which the first transfer to be covered by the election out was made.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that, in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-34 I.R.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping transfer trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-3(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Donor is granted an extension of time of 120 days from the date of this letter to make an election under § 2632(c)(5)(A)(i) that the automatic allocation rules do not apply to the Year transfer to Trust. The election out will be effective as of the date of the transfer, Date 1.

The election should be made on a supplemental Form 709 for Year. The Form 709 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. You should attach a copy of this letter to the supplemental Form 709. We have enclosed a copy for this purpose.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representative.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the Taxpayer requesting it. Section 6110 (k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: